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JENKENS & GILCHRIST, P.C.  
225 WEST WASHINGTON  
SUITE 2600  
CHICAGO, IL 60606

EXAMINER

ALIMENTI, SUSAN C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 02/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/818,347

Applicant(s)

PRINCE, BRUCE H.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchey (USPN 5,493,997).

Ritchey discloses a device that is the same as that which is cited in claims 1-5. In Figures 7 and 8 Ritchey shows a housing comprising a hinged door (62), attached to flat sidewalls (22, 24, 26, 28) enclosing a hollow interior. A hole (30) is located on one sidewall (28) for allowing small animals or insects to enter in from outside, and there is not bait contained within the housing. In column 4, lines 52-56, Ritchey describes how the hole diameter can be adjusted to much smaller sizes. The choice to use plastic or wood, would provide a smooth interior surface. It is further noted that intended that the intended use of Ritchey's device as a birdhouse is irrelevant, as it provides the structure necessary to trap carpenter bees as described by the Applicant.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchey as applied to claims 1, 2, 4 and 5 above, and further in view of Schneidmiller (USPN 4,551,941).

Ritchey discloses the claimed invention except the color of the exterior surface around the hole is not specified. Ritchey, however, does disclose in column 4, lines 9-12 that a multitude of colors and materials could be used in the fabrication of the main housing. Scheidmiller discloses an insect trap that teaches the use of a bright yellow color to attract wasps or the like.

The insects enter into the trap through a bottom element (45) that is colored yellow. In column 6, lines 16-19, Scheidmiller explains that said bottom element is made of an, "opaque material so that the base prevents the passage of light", he further states in column 7, lines 9-13, how the entrance appears darker to the insect upon entry into the trap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by painting it a bright color that would provide a more drastic contrast and make the entrance appear dark, thus making it more attractive to bees or wasps.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchey as applied to claims 1, 2, 4, and 5 above, and further in view of Rimback (USPN 5,685,109).

Ritchey discloses the claimed invention except it is not constructed of a single piece of molded plastic. Rimback discloses a bee trap, as described above, that includes all the limitations cited in claim 6, and further states in column 3, line 30, that the single plastic mold provides a simpler manufacturing process. It would have been obvious to one of ordinary skill in the art at

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the time the invention was made to modify Ritchey's device by making is a single piece of molded plastic in order to ease in the manufacturing process

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchey as applied to claims 1, 2, 4, and 5 above.

Ritchey discloses the claimed invention except he is not specific as to the diameter of the holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hole of a diameter ranging between 5/16 to 1/2 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

7. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable by Rimback, and further in view of Scheidmiller.

Regarding claims 8, 11 and 12, Rimback discloses the claimed invention except the housing contains bait. In Figure 1 it can be seen that the trap comprises two side panels (12,14), each including a hole (40,42) therein for the entrance of an insect, and an integral latching means (56) latching the two sidewalls together. Rimback's trap is made of plastic, which has a smooth surface and further comprises hinges (18,20) that allow for the device to be opened and closed to repeatedly remove the contents therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to remove the bait from Rimback's trap, since it has been held that omission of an element and it's function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

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8. Regarding claim 9, Rimback discloses the claimed invention except the interior surface forming the edge of the hole is not substantially flat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Rimback's "frustro-conical entrance" (40, 42) smaller so that it is contained entirely in the side panel (12,14) and each edge of the entrance is flush with the interior and exterior walls of the side panels, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

9. Regarding claim 10, Rimback discloses the claimed invention except the color of the exterior surface around the hole is not specified. Scheidmiller discloses an insect trap that teaches the use of a bright yellow color to attract wasps or the like. The insects enter into the trap through a bottom element (45) that is colored yellow. In column 6, lines 16-19, Scheidmiller explains that said bottom element is made of an, "opaque material so that the base prevents the passage of light", he further states in column 7, lines 9-13, how the entrance appears darker to the insect upon entry into the trap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by painting it a bright color that would provide a more drastic contrast and make the entrance appear dark, thus making it more attractive to bees or wasps.

10. Regarding claim 13, Rimback discloses the claimed invention except he is not specific as to the diameter of the holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hole of a diameter ranging between 5/16 to 1/2 inch, since it has been held that where the general conditions of a

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claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

11. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rimback, in view of Scheidmiller.

Rimback discloses the claimed method of providing a housing having a hollow interior, and periodically removing the trapped bees from said hollow interior except Rimback uses bait. It would have been obvious to one having ordinary skill in the art at the time the invention was made to remove the bait from Rimback's trap, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

12. Regarding claim 15, Rimback discloses the claimed invention except the interior surface forming the edge of the hole is not substantially flat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Rimback's "frustro-conical entrance" (40, 42) smaller so that it is contained entirely in the side panel (12,14) and each edge of the entrance is flush with the interior and exterior side panels of the trap, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

13. Regarding claim 16, Rimback discloses the claimed invention except the color of the exterior surface around the hole is not specified. Scheidmiller discloses an insect trap that teaches the use of a bright yellow color to attract wasps or the like. The insects enter into the trap through a bottom element (45) that is colored yellow. In column 6, lines 16-19, Scheidmiller

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explains that said bottom element is made of an, "opaque material so that the base prevents the passage of light", he further states in column 7, lines 9-13, how the entrance appears darker to the insect upon entry into the trap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ritchey's device by painting it a bright color that would provide a more drastic contrast and make the entrance appear dark, thus making it more attractive to bees or wasps.

14. Regarding claim 20, Rimback discloses the claimed invention except he is not specific as to the diameter of the holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hole of a diameter ranging between 5/16 to 1/2 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. In *re Aller*, 105 USPQ 233.

### ***Response to Arguments***

15. Applicant's arguments filed 4 November 2002 have been fully considered but they are not persuasive.

In response to Applicant's arguments that the holes disclosed by both Ritchey and Rimback are inadequate in size, the Examiner respectfully disagrees. With regard to Ritchey, the Applicant claims that the hole is "too large to satisfy the requirements of the present applicant's invention", however Ritchey positively discloses that the hole size is adjustable and can be modified to accommodate any diameter required. Regarding Rimback's insect trap, the hole disclosed is designed to accommodate at least insects such as yellow jackets, which require a



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hole similar in size to that of a carpenter bee. To further define the state of the art, the Examiner cites USPN 4,858,374 to Clemons, in which Clemons teaches, in column 2, lines 54-56, the dimension of an entrance hole for the passage of bees to be in the range of 6-13 mm. This is approximately equivalent to a range of 0.236-0.512 in., which comprises the diametrical range cited in dependent claims 7, 13, and 20.

Finally regarding Applicant's argument that the amended limitation of "said housing containing no bait" should render the claims allowable, the Examiner respectfully disagrees. It is first noted that Ritchey's device contains no bait and therefore claims 1, 2, 4 and 5 remain rejected under 35 U.S.C. 102(b). With regard to Rimback, it stands that it is obvious to omit an element and its function in a combination where the remaining elements perform the same functions as before, *In re Karlson*, 136 USPQ 184. Therefore, even with the omission of the bait, Rimback's device, as modified by Schneidmiller's method of using a color attractant, still performs the desired function of the present invention.

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360.

The examiner can normally be reached on Monday-Thursday, 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Susan C. Alimenti  
February 5, 2003

  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600